

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1620 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

PATEL KAMALABEN SHANTILAL

Versus

RAMANBHAI LALLUBHAI PATEL

Appearance:

1. Special Civil Application No. 1620 of 1993
MR JITENDRA M PATEL for Petitioner No. 1
NOTICE SERVED for Respondent No. 1-3
MRS FALGUNI PATEL, AGP, for Respondent No. 4
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CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 17/09/2003

ORAL JUDGEMENT

1. The present petition is filed under Article 226
of the Constitution of India praying for quashing and
setting aside the order of the Additional Secretary
(Appeals), Revenue Department dated 29.5.1992 in Revision
Application No.34 of 1991 whereby the Collector's order

dated 17.9.1991 was quashed and set aside and it was held that the land in question belongs to the State Government and it did not belong to either of the parties.

2. It is the case of the petitioner that the property bearing City Survey No.871 was originally belonging to one Lallubhai Zaverbhai who was uncle-in-law of the petitioner. The said Lallubhai had no heir and after his death in the year 1968-69, the property was entered in the name of the husband of the petitioner Shantilal Haribhai Patel. It was registered as property No.31 and in the resolution passed by the Gram Panchayat on 24.9.1970 it was decided to enter the name of the petitioner's husband in place of deceased Lallubhai Zaverbhai. Since then the property is running in the name of the petitioner's husband till today.

It is further stated that respondent No.1, namely, Ramanbhai Lallubhai is not the son of said Shri Lallubhai Zaverbhai. The name of respondent No.1's grandfather was Mathrubhai Desaibhai and he was not the relative of deceased Lallubhai Zaverbhai from whom the petitioner's husband had inherited the property.

It is further stated that the petitioner's husband, Shri Shantibhai Haribhai expired on March 8, 1988 and thereafter the petitioner had applied for permission to the Gram Panchayat. Prior to that, during his lifetime, the petitioner's husband had applied for permission of the Panchayat to make construction on the property, which was granted. However, an objection was raised by respondents No.1 and 3 on the ground that the petitioner had no right to make construction on 4 ft. Navera which was adjoining to his property No.872. Ultimately, the Panchayat remanded the proceedings and thereafter in the year 1990, the Panchayat has again permitted the petitioner to make construction on the said piece of land by Resolution dated 24.1.1990. Against this Resolution, the respondents have preferred an appeal bearing No.3 of 1990 before the Appellate Committee of the District Panchayat, Vadodara. The said appeal was decided on 14.5.1990 and it was held therein that there was a dispute regarding the ownership and hence the parties were directed to lodge their claim under Section 101 of the Gujarat Panchayats Act.

It is further stated that during this period, the City Survey Officer held inquiry in 1986 and he by his order dated 31.5.1986 has held that the property belongs to Patel Shantilal Haribhai and his name should be entered as owner of the said property. On the basis of

this finding, sanad was also issued in the name of the husband of the petitioner in the City survey record. Being aggrieved by this, respondents No.1 and 3 preferred an appeal before the Deputy Collector, Vadodara against the said order of the City Survey Officer and the Deputy Collector by his order dated 18.1.1991 remanded the matter back to the City Survey Officer to decide in accordance with law. Being aggrieved by this order, the petitioner preferred CST Appeal No.15 of 1991 before the Collector, Vadodara and the appeal was allowed by the Collector by setting aside the order of the Deputy Collector and confirming the order of the City Survey Officer.

It is further stated that respondent No.1 Ramanbhai and deceased Tribhovandas had filed Regular Civil Suit No.693 of 1990 before the Civil Judge (SD), Vadodara seeking a declaration to the effect that they are the owners of the said property and making further prayer that the petitioner, who was defendant in the said suit, should be restrained from making construction on the said piece of land. The petitioner appeared in the said suit and filed joint reply to the suit and application for injunction and contended that the petitioner was owner of the suit property and the respondents have no right whatsoever in the suit property. The Civil Court has granted injunction to the effect that the petitioner should not make any further construction on the said piece of land. The suit proceedings are still pending before the Civil Court.

On the other hand, being aggrieved by the order of the Collector, respondents No.1 to 3 filed revision application before the State Government challenging order of the Collector dated 17.9.1991, and the Secretary, instead of deciding the controversy raised by the parties has travelled beyond his jurisdiction and held that the land belongs to the Government.

It is this order of the Additional Secretary, which is under challenge in the present petition.

3. Mr JM Patel, learned advocate appearing for the petitioner submits that the Secretary has committed an error apparent on the face of the record inasmuch as he has exceeded his jurisdiction to decide the dispute between the parties. Mr Patel has further submitted that it was not the case of either of the parties before him that the land belongs to the State Government and yet the finding was given by him to that effect for which there was no basis or claim from anyone. Mr Patel has further

submitted that if the State Government really believes that the property belongs to the State Government then in that case, the proper remedy under the law is to make an inquiry under Section 37 of Bombay Land Revenue Code in which the Collector has power to decide whether the property belongs to the State or a private individual. Instead of resorting to such legal remedy as provided under the Code itself, the Secretary has held that the property belongs to the State Government, which is not in accordance with the provisions of law. Mr Patel has further submitted that the order passed by the Secretary is required to be quashed and set aside.

In support of his submission, Mr Patel has relied on the decision of this Court in the case of Natvarlal Karsanji Gohil vs. State of Gujarat & Anr. reported in 2000 (3) GLH 701 wherein in the identical situation, this Court has held that when there is a dispute between the parties with regard to ownership of land and measurement of land, the authority has held that the land belongs to the Government, which was not the case of either of the party, such an order suffers from nonapplication of mind and it is required to be interfered with.

4. Mrs. Falguni Patel, learned Assistant Government Pleader appearing for the respondent-State, on the other hand, supported the order passed by the Secretary. Mrs Patel has submitted that while taking the view, the Collector has relied on the resolution passed by the Panchayat wherein it is mentioned that the land belongs to the State Government. However, the said resolution is not placed on record and it was not available either with the petitioner's advocate or with the learned AGP appearing for the respondent-State. Mrs Patel has further submitted that neither the Deputy Collector nor the Collector has examined this aspect of the matter and the indulgence shown by the Secretary while passing the impugned order is just and proper and the same cannot be interfered with while exercising the power under Article 226 of the Constitution of India.

5. After having heard the learned advocates appearing for the respective parties and after having gone through the orders passed by the authorities below and also after having considered the judgment of this Court in the case of Natvarlal Karsanji Gohil (supra) relied on by Mr Patel, I am of the view that the Secretary has exceeded his jurisdiction while passing the impugned order, as the controversy before him was altogether a different one and it was not the case of either of the parties that the land belongs to the State

Government and still the said finding was given by him, which is contrary to the provisions of law. Mr Patel has rightly pointed out that a detailed provision is prescribed in the Land Revenue Code itself that when there is a dispute with regard to the ownership of the property between the State Government and the private individuals, one has to take recourse to the provisions contained in Section 37 of the Bombay Land Revenue Code. Instead of adopting the said course, the Secretary has adopted the shortcut and straightway given the finding that the land belongs to the State Government. This finding is neither valid in law nor on facts and it is required to be interfered with. Even otherwise, the Collector has confirmed the order of the Deputy Collector, who in turn has remanded the matter to the authority and the Collector has also given a finding that whatever outcome may come in the pending civil litigations, necessary effect can be given to the said outcome in the civil litigations. The said finding was wrongly upset by the Secretary while passing the impugned order. This Court is, therefore, of the view that the present petition is required to be allowed.

6. Accordingly, this Special Civil Application is allowed and the impugned order dated 29.5.1992 passed by the Additional Secretary (Appeals), Revenue Department is quashed and set aside.

It is, however, made clear that if the Government is still of the view that the land belongs to the State Government, it is open for the State Government to make necessary inquiry in the matter or even to make proper representation in the pending litigations either by moving an application for joining as party or by adopting any other course, which is available to the State Government under the law.

7. With these observations, the petition is allowed.
Rule is made absolute with no order as to costs.

(K.A. PUJ, J.)

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